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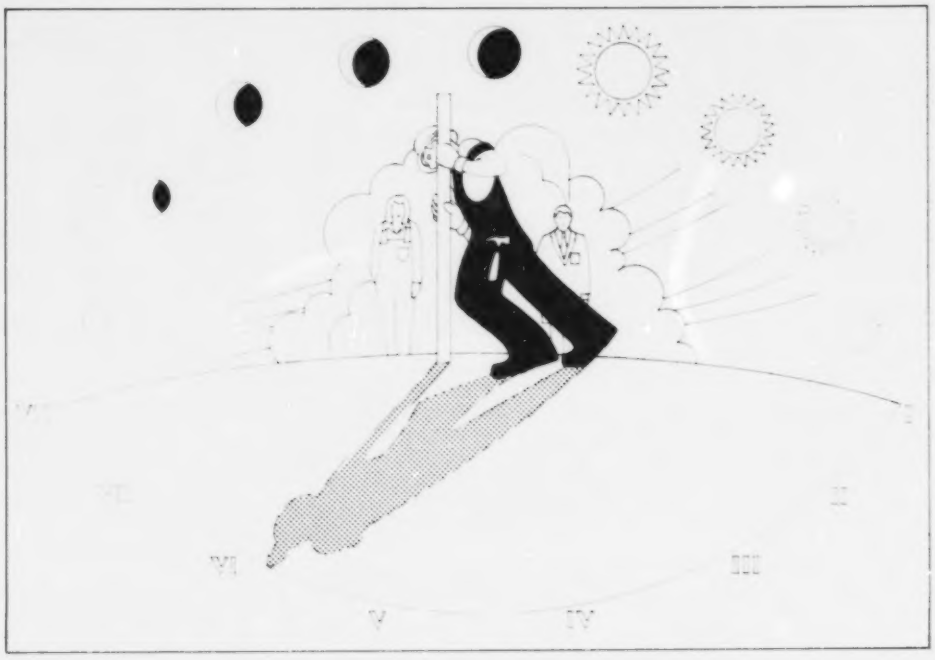

Evolution of Legislated Standards on Hours of Work and Overtime

EVOLUTION OF LEGISLATED STANDARDS ON HOURS OF WORK IN ONTARIO

by

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(A Report Prepared for the Ontario Task Force on Hours of Work and Overtime)

* The views expressed in this report are those of the author and need not reflect the position of the Ontario Task Force on Hours of Work and Overtime.

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ABSTRACT: **Evolution of Legislated Standards on Hours of Work in Ontario**

The purpose of the paper is to describe the development of Ontario legislation controlling hours of work from its beginning in the Factories Act of 1884 to the present day. The development occurred in two distinct stages. From 1884 to 1944 hours were limited to protect the health and safety of workers deemed to be in special need of such protection. Those who benefited were women and children employed in factories and, somewhat later, in shops, and youths and underground production workers in mines. The paper shows only limited improvement in the standards set at the beginning of this period except with respect to the employment of children. Then, in 1944 a much lower maximum hours standard was introduced for all paid workers other than those deliberately excluded from its coverage and compulsory vacations with pay were introduced. This change shifted the emphasis away from health and safety objectives to job creation and equitable employment conditions. During the 1944 to 1986 period this shift became more pronounced and this paper documents the improvement of existing standards and introduction of new ones that occurred during the 1960s and 1970s. The discussion and tables guide the user through the many changes that occurred and to some extent the reasons for them with most attention being given to standards that influence time spent at work. For the person interested only in the framework of the development an extensive summary is provided.

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EVOLUTION OF LEGISLATED STANDARDS ON HOURS OF WORK IN ONTARIO

This paper is intended to analyze the development of Ontario's major laws governing the time worked by paid employees. The paper outlines the objectives of the relevant legislation and the measures put in place to achieve them. The material has been drawn from statutes and regulations, government records, and some historical works. The administrative aspects of the legislation are the topic of a second report by the author: Current Administration of Legislated Standards on Hours of Work in Ontario.

Government intervention in hours of work in Ontario occurred in two clearly distinguished periods. The first extended from the passage of the Ontario Factories Act, 1884 up to 1944, and the second from 1944 to the present. During the earlier period, the hours of work controls formed parts of statutes that regulated many aspects of the operation of factories, shops, offices, and mines. They covered selected groups of workers and were primarily directed toward protecting employee health and safety. In the second period, hours-of-work provisions along with those on wages, vacation, overtime pay, and other conditions of employment became elements of legislation focussed on employment arrangements. The coverage of the hours requirements were now comprehensive rather than selective, and while health and safety of workers remained an important objective, those area relating to employment levels and relative fairness of employment conditions received greater attention.

The two periods defined above are described separately in this paper. For each there is discussion of the objectives and of the nature and content of the standards. The former is presented in the text, while the standards are largely summarized in tables accompanied by a text that highlights relationships and change. Because of marked differences in the hours of work legislation enacted prior to 1944 and from that year onward, the formats of the tables are varied; however, every effort has been made to establish

clear linkages between them. Note too that, because the legislation of the earlier period was not repealed until 1964, there is some overlap in the time coverage of the tables. This occurs with respect to minor controls on daily hours of work and is not a serious problem in the presentation of the information.

The paper describes only the main stream of hours of work legislation. In 1944, this shifted from an approach tailored to industry or industry sector and group needs to one that attempted to cover all employees. Manifestations of the earlier type of legislation remained, however, and an especially vigorous one has been the Industrial Standard Act. That Act does not define working hours but establishes a process whereby some employers and workers in an industry may do so for themselves and, by obtaining an endorsement from the Ministry of Labour, may legally enforce these hours on all employers and employees in that industry. Requirements of this sort are not described in the tables but are noted as necessary in the text.

1884-1944 PERIOD

Objectives

The objective stated in The Ontario Factories Act, 1884 was to provide "for the safety, health and well-being of operatives in and about factories and like places." To this end, it set out requirements for guarding machinery, maintenance, ventilation, sanitation and among other matters, the hours of work of children, young girls, and women. No limitations were placed on hours worked by males 14 years of age or older. Before the end of the nineteenth century, similar legislation protected workers in shops (places handling goods or offering them for sale) and mines. In each of these environments, hours were restricted for certain categories of employees. Direct statements of purpose were missing from these later statutes, but their content and the environment in which they were enacted leave little doubt about the objectives being much the same as that one defined in the original factories act.

The prevailing work-time practices of the late 1800s suggest that the limits on hours imposed by the factory and shop legislation

were a cautious response to the problem being addressed. At best, they seem to have condoned the most usual hours of work of the period as maximum hours for workers with limited bargaining power. During the three decades following 1870, 10 hours per day and 60 per week were common regular hours of work in paid employment in Ontario.[1] Although the 9-hour day gained some acceptance prior to 1900, there is clear evidence that workdays of 11 and 12 hours occurred frequently in shops and factories.[2] As Table I shows, the protective legislation of the period made provision for these and even longer hours in both factory and shop employment.

Outside the Legislature, there was widespread concern about the ill effects of long hours of work. From the 1860s onward, this was expressed in terms of unsafe and unhealthful conditions in factories, impaired growth and health of children and a lack of leisure time and energy for educational development among working people. Awareness of these circumstances grew from personal experience, labour unions, organized inquiry, and public protest. In the late 1860s and early 1970s the movement to secure a 9-hour day was underway in most major towns in Ontario. Led by labour organizations, the movement gained extensive support from the press, community leaders, and the public.[3] It failed to achieve its objective quickly, but formed a basis for union demands and labour policies that had significant success before the end of the century.

Perhaps more influential in shaping the objectives of early hours-of-work legislation was rapid growth in paid employment in manufacturing and service industries. Following the establishment of the National Policy in 1879, the expansion of the textile, clothing, tobacco products, food processing, and other low-wage industries drew many women and children into factory jobs and generated the conditions that the first factory acts in Ontario and Quebec were intended to alleviate.[4] During the 1880s, the Federal Government undertook several investigations of the conditions in factories (e.g., the provocative Royal Commission on Labour and Capital in Canada). These investigations and the design of the factories acts leave little doubt about the concern aroused by the exploitation of women and child workers. Although there is evidence that both the

investigations and new laws resulted to some considerable extent from political window-dressing,[5] they focussed attention on the need to improve working conditions and took some steps in that direction.

Frequent revisions of the factory and shop legislation occurred until 1932. Nevertheless, the main thrust toward improving hours of work took place in the private sector. There was widespread acceptance of a 9- and then an 8-hour day and, in the years following World War II, of a 40 hour week. These events greatly reduced the proportions of employees to which the daily and weekly hours standards of the Factory, Shop and Office Building Act offered meaningful protection. For example, as early as 1913, the statutory maximum of 10 hours per day and 60 hours per week had fallen behind the prevailing average hours of work, which were about 55 hours in manufacturing (Reid 1985, p. 143). These changes led to a shift in the rationale for government intervention in worktime.

Control Measures, 1884-1944

Table 1 shows how measures limiting hours of work evolved in Ontario statutes regulating factories, shops, and offices. For the most part, the statutes consisted of definitions of the workers covered by the standards, and statements of what hours were permissible. The table also reveals that the restriction of hours began in factories, (in 1884) and then was extended to shops in a somewhat less restrictive fashion (1888 and 1897). Then factories and shops, including restaurants, were brought under an almost uniform set of provisions (in 1913). Nevertheless, it is clear that the use of common standards for factories and shops created some difficulties. This is indicated by the time it took to establish the same maximum hours in factories and shops. Uniformity in the standards governing the time of day when work might be done was never achieved and in 1932 the requirement that work in factories should terminate at 6:30 p.m. was continued but work in shops was extended from 6:00 to 11:00 on Monday through Friday. The change reflected increased demand for service from some shops during evening hours and greater effort to enforce the legislation in restaurants.

Table 1
Statutory Requirements Governing Hours of Work in Ontario Factories and Shops, 1884-1964

Date and Statute	Coverage of Statute	Coverage of Hours	Minimum Age	Maximum Hours	Time of Day
1884					
Ontario Factories Act, 1884	- "Operatives in factories and like places." - Excluded: persons doing repair work, factories employing 20 or fewer workers (reduced to 5 in 1889), factories in homes employing only family and not using steam, water, or mechanical power.	- Children (persons under 14 years of age), young girls (females 14 but under 18 years), and women (females of 18 years or more). - Males 14 years or over not covered.	- Males: 12 years. - Females: 14 years. - Younger children might gather fruit and vegetables for canning but not to work in cooking room.	- 10 hours per day and 60 hours per week. - Daily maximum might be exceeded if weekly maximum observed. - Week: midnight Sunday to midnight following Saturday.	- None specified. - Notice of the hours between which a child, young girl, or woman might work signed by the government inspector and employer to be displayed in a conspicuous place.
1888					
Shops Regulation Act	- Employees working in buildings, booths, stalls, or other places where goods handled, exposed, or offered for sale.	- Young persons (males under 14 and females under 16 years).	- None specified.	- Daily: 12 hours Monday to Friday, 14 hours on Saturday. - Weekly: 74 hours. - Daily maximum might be exceeded, but 74-hour weekly maximum to be observed.	- None specified. - Notice showing daily hours of work to be posted.
1897					
Ontario Shops Regulation Act, 1897	- As for 1888 plus places where goods made if not covered by Factories Act. - Excluded: tobacconists, news agents, hotels, inns, taverns, and laundries not using steam, water, or electric power.	- Children, young girls and women (defined in 1884 above).	- 10 years, both sexes.	- No maximum specified, but see "Time of Day" entry.	- 7:00 a.m. to 6:00 p.m. Monday to Friday including 1 hour for lunch. - 7:00 a.m. to 10:00 p.m. Saturday or one other day of week including 1 hour and 45 minutes for eating periods.
1913					
Factory, Shop and Office Building Act, 1913 (replaced all earlier factory and shop legislation)	- Employees in factories, shops, and offices. - Excluded: factories with 5 or fewer employees using only manual power, home laundries, shops attached to owner's family dwelling and employing only family.	- Children, young girls and women (defined in 1884 above) and youths (males 14 but under 16 years of age) employed in factories and shops.	- Both sexes: 14 years in factories and 12 years in shops, but 14 years during school hours. Canning exemption: children 12-14 maybe employed; under 12 may be employed out of doors to gather and prepare produce from June 15 to Sept. 15.	- Factories and shops: 10 hours per day, 60 hours per week.	- Factories: 7:00 a.m. 6:30 p.m. - Shops: 7:00 a.m. to 6:00 p.m. Monday to Friday; 7:00 a.m. to 10:00 p.m. on Saturday, day preceding a holiday. - Children not to be employed during school hours without permit under Truancy Act.

Table 1 continued

Date and Statute	Coverage of Statute	Coverage of Hours	Minimum Age	Maximum Hours	Time of Day
1921 Factory, Shop and Office Building Amendment Act, 1921	- As for 1913.	- As for 1913.	- In factories, as for 1913. - In shops, 14 years.	- As for 1913.	- As for 1913. - Persons 14 years to 16 years of age excluded from work between 8:00 a.m. and 5:00 p.m. on school days, Adolescent School Attendance, Act, 1919.
1929 Factory, Shop and Office Building Act, 1929	- Employees in factories, shops and offices. - Excluded: home laundries, and shops attached to owner's family dwelling and employing only family members.	- Youth, young girls, and women as defined in 1884 and 1913. - Employment of children prohibited.	- 14 years -- both sexes in both factories and shops. - Canning exemption (1913) removed.	- 10 per day, 60 per week in both factories and shops -- same as 1913.	- As for 1913 and 1921.
1932 Factory, Shop and Building Act, 1932	- As for 1929.	- As for 1929.	- As for 1929.	- As for 1929.	- As for 1913 and 1921 but shop hours extended to 11:00 p.m. Monday to Friday.
1953 Factory, Shop and Office Building Amendment Act, 1953	- As for 1929.	- As for 1929.	- As for 1929.	- Hours provisions replaced by 8 daily, 48 weekly of Hours of Work and Vacations with Pay Act, 1944 (Table 2).	- As for 1932, but Minister may exempt women and young workers from time-of-day restrictions.
1964	- Factory, Shop and Office Building Act repealed.		- Moved to Indstial Safety Act, See text.	- As for 1953.	- Provision moved to Hours of Work and Vacations with Pay Act.

Coverage:

Under the early legislation, some of the coverage provisions were remarkably stable while others were subject to frequent change. Women (females 18 and over) and young girls (females 14 through 17 years of age) came under hours controls in 1884 in factories and 1897 in shops; the requirement did not change until the Factory, Shop and Office Building Act was repealed in 1964. In contrast, there was frequent redefinition of the minimum age of employment. Children (persons under 14 years of age) were initially eligible for factory work at age 12, but in shops no minimum applied. In 1897, a minimum age was established at 10 years, and from that time on the age at which children might work in factories and shops became more restrictive until the practice was abandoned in 1929. Youths (boys 14 through 15 years of age) were first restricted in hours of work in 1913. These developments reflected continuing concern about exposing children and adolescents to long hours in what was often unhealthy and unsafe surroundings. The developments also reflected recognition of the need for greater educational opportunities as evidenced by the 1919 passage of the Adolescent School Attendance Act which prohibited employment of persons under 16 years of age during the school day.

Although not shown in Table 1, a somewhat similar development for the protection of children and young workers occurred in mining legislation. In 1892, the minimum age of employment for underground work in mines was set at 15 years. In 1912, the minimum age was 17 years for boys in underground work and 14 years for both boys and girls in above-ground mining activities. In 1919, the minimum was raised to 18 years for underground work and 16 years elsewhere in mines. The minima remained at the 1919 levels in the Mining Act until 1979 when the standard was moved to regulations made under the Occupational Health and Safety Act. Also, there was a gradual relaxation of the prohibition on female employment underground in mines.

Maximum hours and related standards:

Maximum daily and weekly hours of work first appeared in Ontario legislation in 1884 and ever since have been the principal means of government control of working time. The original maximum of 10 hours

per day and 60 per week applied to women and young workers (variously defined in Table 1) in factories, but it was not adopted fully in shops until 1913. Then, it remained the effective standard for the groups concerned until the 8-hour day and 48-hour week comprehensive maximum superseded it in 1944.

In mines there was an independent development based on worker age and work location. In 1892, boys under 17 years of age were limited to working 8 hours per day and 48 hours per week in underground work, while no maximum applied to older workers. This situation continued until 1913, when all underground production workers were limited to 8-hours in any 24-hour period. By this time the minimum age for underground employment had risen to 17 years but the standard did not apply to "non-productive" workers, such as pumpmen, cagemen, persons engaged in surveying or measuring, and until 1948, to shifts in which fewer than six workers were employed. But by that time the maximum of the Hours of Work and Vacations with Pay Act, 1944 had, had taken precedence.

Throughout the 1884-1944 period, the hours standards were reinforced by various other requirements of the legislation. Specification of the time of day when work might be done was frequently required, and sometimes the work period, less specified meal breaks, permitted only 10 hours of work. Other supportive measures included defining the workweek to exclude Sunday; requiring employers to maintain registers of the names, ages, and addresses of all employees subject to the maximum hours provisions; and mandatory posting of notices signed by the employer and factory inspector showing a schedule of the daily hours to be worked by women, adolescents, and children employed. Perhaps more important was the development of factory, shop, and mine inspection staffs who had powers of entry, observance of premises and records, and enforcement of requirements of the legislation. Initially these inspections were too few in number to cover the work to be done and they were roundly criticized by the Royal Commission on Labour and Capital in Canada in its 1889 reports. This and other pressures brought improvements, and early annual reports of the Department of Labour verify that the

inspectors did inspect and enforce standards relating to as minimum working age and daily hours.

Table 1 does not always show the eating period requirements of the legislation, but they were defined for factories and shops from the 1880s onward. Invariably they were one hour at noon in a normal workday. In addition, if work extended beyond 7 o'clock in the evening a 45 minute lunch period had to be given at some time between 5:00 and 8:00 p.m. These requirements remained effective under the Factory, Shop and Office Building Act until it was repealed in 1964.

The early hours of work standards had a relatively narrow coverage with respect to employees (being restricted mainly to women and youths) and industries (being restricted mainly to factories and shops). This may explain in part why the maximum hours standards were fairly close to the prevailing average, at least in the earlier years. That is, one normally thinks of employment standards as providing a minimum safety net which would be below the average. In addition, the limited coverage to those who were perceived to be by far the most in need may also explain why few exceptions were granted for these groups to exceed the maximum hours standards.

In factories inspectors were required to authorize any excess hours worked by women, adolescents, and children. The grounds for doing this were:

- an accident to motive power that prevented normal operations;
- machinery breakdown beyond the employer's control; and,
- customs or exigencies of the trade which demanded longer hours of work.

Even in these circumstances the inspector's authority to extend hours was limited to 36 days in a 12-month period. On those days work could not begin before 6:00 a.m. or end later than 9:00 p.m., and the maximum hours were 12½ per day and 72½ per week. Further, a notice detailing the extent and particulars of the exemption had to be posted in a conspicuous place. Thus while the exemptions increased

hours to what seem intolerable levels, especially for children, they were of limited duration compared with ones issued today.

Similarly, few exceptions to standards in mines were allowed. They were limited to working longer than 8-hours on some days in return for a half-day off on Saturday or in return for not having to do Sunday work that might otherwise be necessary.

1944-86 PERIOD

Objectives

The Hours of Work and Vacations with Pay Act, 1944 established two basic employment standards: "...the working hours of an employee in any industrial undertaking shall not exceed eight in the day and forty-eight in the week"; and "...every employee in an industrial undertaking shall be given a vacation of at least one week with pay for every working year of his employment." "Employee" was defined as "any person who is in receipt of or entitled to any compensation for labour or services performed for another"; and "industrial undertaking" encompassed work done in any business or industry. Consequently, the Act extended maximum hours of work controls from selected groups (mainly women and youths) and selected sectors (mainly factories, shops, and mines) to all paid employees in the Province except those of the Crown. In addition, paid vacation became a legal requirement for the first time in Ontario.

The legislation signalled a new approach in the use of mandatory standards to improve conditions of employment. The comprehensive employee coverage of both the maximum hours and vacations with pay provisions was a sharp break with the cautious approach taken to limiting hours of work in the past. The hours standard set a level of protection that required a substantial reduction in the time many workers spent on the job and a significant adjustment of practices in industry. The magnitude of this is indicated by data collected in the Department of Labour in Fiscal Year 1942-43. Of 342,000 male workers covered, 59.5 per cent worked 49 to 60 hours per week and 40.5 per cent worked 48 hours or less. Similar proportions for 147,000 female workers were 50.2 per cent and

49.8 per cent respectively.[6] In addition, with respect to vacations with pay, the Province for the first time introduced a completely new condition of employment on a comprehensive coverage basis. Thus, the new Act set precedents that over the next four decades shaped hours of work, wage, time-off with pay, and other employment standards.

This change in the approach to protecting workers with limited bargaining power formed part of the effort made by the government of Premier George Drew to set Ontario on a new course of economic and social development in the post-war period. The bill proposing the new conditions of employment drew support from all parties in the Legislature, and the objectives put forward to explain the government's action were accepted with minimum comment.

One of these objectives was to improve worker health and safety. The Minister of Labour, the Honourable Charles Daley, advanced the view that in "high speed industry people work at a terrific rate and eight hours a day is plenty long enough"[7] under these conditions. Later, in a formal statement, he said "...it has been definitely established that fatigue sets in after 48 hours in any week, that a man does not do as good work and that his health is being slowly but surely impaired."[8] Despite the failure to introduce strong technical evidence, the House had no difficulty accepting the argument that worker health and safety needed to be improved and that establishing maximum hours at levels substantially lower than those prevailing in much of industry would contribute to that end.

During 1944 and in the years following, many suggestions were made that the weekly maximum should be 40 hours. The need has not been clearly demonstrated that the 8 hour day and 48-hour week present a sufficient health and safety burden to warrant change, however. The present standard in conjunction with the achievement of a 40-hour week or less in most jobs appear to have removed substantially the length of working hours as a priority health and safety issue in Ontario. Rather than pressuring for a reduction in the statutory maximum workweek, workers have shifted their demands towards receiving an overtime premium beyond the regular work day.

This emphasis suggests that health and safety concerns are far less urgent when normal hours are 8 in the day than when they were 10 or 12.

The second objective of The Hours of Work and Vacations with Pay Act was "...to distribute work so that some will not be working long hours and others have no work at all."[9] Speaking in the House, the Minister observed with reference to the end of World War II that "...there is no doubt bound to be a surplus of labour over jobs for certain periods and I think it would be well to establish a 48 hour week"[10] [to alleviate the anticipated situation]. Other members of the government, including the Treasurer, the Honourable Leslie Frost, concurred in the Minister's assessment of the post-war employment outlook. Clearly, there was real concern that the end of the demand that had been generated by the war, combined with the return of members of the armed forces to the labour force, would bring about a recurrence of high unemployment. Part of the government's response to this was to use greater control of working time as an instrument of employment policy.

Although the approach had not been tried in Ontario, it had been considered. In 1935, draft legislation, on which the 1944 bill clearly was patterned, was prepared in the Labour Department but not presented to the Legislature.[11] Associated documents indicate that the work was done in response to the failure of federal initiatives, directed toward relieving the heavy unemployment of the 1930s, to gain approval as being within the jurisdiction of the Parliament of Canada.

While there was agreement in principal that the hours of work requirement of the Act should promote more employment, there was concern in the community, the Opposition, and the Government about the consequences of applying a comprehensive hours of work standard. Employers feared increased labour cost, and workers feared loss of pay. The Co-operative Commonwealth Federation, (C.C.F.) official Opposition sought to ensure maintenance of take-home pay where hours had to be reduced to comply with the new maximum. The government's response was to let the private sector work out through collective

bargaining and other means, how it would accommodate the hours requirement, and to give assurances that the administration of the new law would be "flexible."[12] To ensure this flexibility regulations were to be drawn to respond to different conditions in different industries and occupations. The Treasurer noted;

> ...the Bill is very elastic -- which will enable the Industry and Labour Board [the designated administrator] . . . to make regulations exempting certain cases. I have in mind the canning industry and the lumber industry, seasonal employment where a lot must be done in a short time. With proper representations, these industries could be exempted. It was our intention, and I believe we have succeeded in making it flexible.[13]

Indeed, the government's reliance on flexibility in application of the hours standard became such a refrain in the debate that it prompted both the Opposition and the responsible Minister to express concern that employers might attempt to "get behind" (circumvent) the intent of the legislation. Thus, there was recognition from the outset that overzealous application of the hours standard could defeat the employment objective of the Act and that knowledgeable and sensitive administration would be required.

With respect to objectives, vacations with pay were associated mainly with protecting worker health and safety. The Minister of Labour considered that the nature and organization of industrial employment rendered occasional extensive periods of leisure necessary to worker health and well-being. Further, paid vacation, in many instances more than one week, was already common practice in industry, and this was a major consideration in what the government proposed. Equity required that some vacation with pay be made available to workers who could not secure it for themselves, and it seemed appropriate that the government intervene on their behalf.

For a year or two the legislation had an important effect reducing hours of work but relatively full employment for 30 years following World War II and almost universal adoption of regular hours substantially less than 48 per week tended to reduce the urgency of the original objectives of the Hours of Work and Vacations with Pay Act. Instead, equity, or fair employment practice, became the

central concern in developing employment standards. A memorandum prepared to give background to the proposal of the 1968 Employment Standards Act stated:

> Workers with little or no bargaining power still find themselves in some industries and areas of the Province, working hours that are excessively long in relation to prevailing and established practices in the community. It is these workers who require the protection of hours legislation that reflects current conditions.[14]

Comparison with what has been achieved where workers have greater bargaining strength became the major criterion for change in the period of rapid development of vacation, holiday, premium pay and other standards in the eight years following 1965. Before the end of that period, however, more specialized concerns, such as employment termination and pregnancy leave, had developed in response to the needs of particular groups. Despite these changes, the original employment creation objective of the legislation was only in abeyance, partly because of favourable employment levels and party because of uncertainty about the effectiveness of job creation efforts based on mandatory cuts in hours of work.

Control Measures, 1944-86

The 1944-86 period began with emphasis on direct legislative control of daily and weekly hours of work. This momentum faded rather quickly, perhaps because of the success of the program itself but also because of rapid reductions in hours achieved mainly through collective bargaining, a growing preference for longer periods of leisure time, and -- with relatively satisfactory hours of work in place -- a shift of attention to other conditions of employment. Table 2 shows how these developments shaped the choice of the standards that govern the time spent at work and the lack of attention given these standards in recent years as security and special group concerns came to the fore. Table 3 describes the coverage of the daily and weekly hours control measures and exemptions from them. The development of these aspects of vacation, holiday, and premium pay requirements is not traced in tabular form, but the current status of exemptions from them is shown in Appendix A. Table 4 deals with the development of permits to exceed the maximum hours standard; that is, it describes the ways in which

flexibility in the standard was attained. The changes as noted came, for the most part, with the Employment Standards Act, 1968 (Effective, January 1, 1969) and a series of revisions to it that occurred up to 1974. This Act drew together most Ontario conditions of employment into one piece of legislation, including such matters as hours standards, vacations, holidays, premium pay, minimum wages, equal pay for equal work, and termination of employment.

Daily and Weekly Hours:

The outstanding characteristic of the maximum daily and weekly hours standard set in 1944 has been its stability. From the outset, some variation from the daily maximum has been permitted (Table 2) when authorized by the administrator. However, in 1974 these variations were limited to a maximum 12-hour day, and they have always been subject to observance of the 48-hour week. Exceptions to the daily maximum have been made to permit the convenience of working different configurations of hours within the weekly limit; for example, to allow for a 5-day week.

Although the 48-hour maximum clearly exerted pressure to reduce hours when it was put in place in 1944, it may now be an invitation to exceed normal or regular hours of work. In that year, the Canada Department of Labour reported average or predominant normal hours for male workers in 62 Ontario industries or industry groups. Thirty-seven of these reported hours exceeding 48 per week, and in 13 they exceeded 50 per week. In lumbering, mining construction, street railways, and telephone communications, hours were shown as ranging up to highs of 56 and 60 hours weekly.[15] By 1983, 93 per cent of non-office employees and 96 per cent of office employees surveyed by Labour Canada worked 40 hours or less per week.[16] Since premium rates are paid to practically all nonoffice and many office employees for overtime hours, it is clear that many can be worked without contravening the Ontario maximum hours limit.

While the maximum hours standard has not changed much over time, this is not the case for the requirements pertaining to when work might be done during the day or to eating periods. The former requirement received attention equivalent to maximum hours in the

early factory and shop legislation and continued in effect for women and young workers until 1964. In that year, it was transferred to the Hours of Work and Vacations with Pay Act, although in a much less restrictive form (Table 1). The coverage of the provision was reduced further in 1968, and efforts to define the time of day when work might be done were abandoned in 1974 as being unnecessary and inconsistent with changed community attitudes and industry needs. The authority for specified meal times also continued in the Factory Shop and Office Building Act until it was repealed, when the general requirement was set at one-half hour and placed in the Hours of Work and Vacations with Pay Act. Under the new Employment Standards Act, eating periods became uniform at one-half hour (or less, if approved by the administrator) for workers of all ages. This requirement, along with one that eating time must be provided after a maximum of five consecutive hours of work, is still in effect.

Paid Time-Off and Premium Pay:

The vacation with pay standard remained static at one week per year of service for 22 years. Then, in 1966, a period of frequent change began that resulted in the present provision, reached in 1973, of two weeks after each 12 months of employment. The minutes of Industry and Labour Board meetings reveal that the static standard of the early years masked difficult administrative problems both in interpreting the legislation and securing compliance. For example, an amendment to the statute in 1946 was required to ensure that workers who worked less than a full year received vacation pay equal to 2 per cent of earnings while employed. Another amendment was required in 1947 to support administrative decisions on when vacation might be taken, and to determine the method of calculating the 2 per cent of pay and the use of vacation-with-pay credit stamps. Later revisions to both the Act and the regulations focussed on better record keeping and improving the administrator's capacity to ensure that workers received the benefits intended under the Act. By 1966 when improvements in the vacation provision of the legislation began, 87 per cent of nonoffice employees were already receiving two weeks of paid vacation, and 79 per cent were eligible for that level of benefit after three years or less service. By 1983 the survey, which no longer reported on two week vacation provisions, showed that three

weeks were available to 95 per cent of nonoffice employees, with 87 per cent of them qualifying after five years of service or less.[17]

As Table 2 shows, holidays with pay and premium pay are relatively recent additions to legislated conditions of employment. Both these standards were at the present level of benefit by 1974, and their development was in direct response to the prevalence of both practices in industry. That is, they were introduced to extend the benefits in question to workers who apparently could not bargain for them successfully, and in both cases the standard established was less than the most generous industry practice. For example, in 1966 survey results showed 88 per cent of nonoffice employees and 97 per cent of office employees in Ontario as being paid for eight or more holidays per year.[18] Also, the premium pay requirement was seen as a move toward enforcing the maximum hours standard by this means, although the direct enforcement and permit system was retained.

Coverage and Exemptions:

As mentioned, the employment standards legislation specifies the same general coverage but somewhat different exemptions for the different standards set. That is, the exemptions relating to daily and weekly hours of work differ in some details from those for the vacations with pay, overtime pay, and other standards. This practice began in 1944, but since the late 1960s has become much more complex with the proliferation of standards. Accordingly, the development of exemptions is traced in Table 3 only with reference to the maximum hours standard, and its main use is to indicate what categories of work and employees have been eligible for exemption and why. (For exemptions from other standards see Appendix A.)

Table 3 suggests the difficulty of applying uniform control of hours to all employment situations. The general coverage provisions of the Employment Standards Act extend to all employees except those of the Crown. The same was true for the Hours of Work and Vacations with Pay Act but problems of application were foreseen before it was passed. Some exemptions were written into the statute and regulatory authority was provided for adding others. In 1945, the government used this authority to exclude employees qualified and working in

Table 2
Statutory Requirements Controlling Hours of Work in Ontario, Enacted 1944-86

Date and Statute	Daily and Weekly Hours			Annual Paid Time-Off		
	Maximum Hours	Time of Day	Eating Periods	Vacation	Public Holiday With Pay	Premium Pay
1944 Hours of Work and Vacations with Pay Act, 1944	- 8 per day, 48 per week. - Reg. 8/44 permitted daily maximum to be exceeded where longer hours were the "custom or practice" or a work week of less than 6 days was established.	- No provision. - Until 1964, regulated by the Factory, Shop and Office Building Act. (Table 1).	- No provision. - Until 1964, regulated by the Factory, Shop and Office Building Act.	- 1 week anually after first year of employment.	- No provision.	- No provision.
1964 Hours of work and Vacations with Pay Amendment Act, 1964	- Where more than one employer, no person under 18 years of age to work more than a total of 8 hours in a day for both or all.	- Young persons (under 18 years) and women prohibited from working after midnight and before 6:00 a.m. unless authorized by the Minister.	- One-half hour after 5 consecutive hours of work, but, for all except "young person's, shorter lunch periods permitted if already the practice, & approved by administrator.	- As above.	- No provision.	- No provision.
1966 Hours of work and Vacations with Pay Amendment Act, 1966	- As above.	- As above.	- As above.	- 1 week annually during first 3 years of employment. - 2 weeks annually after 3 years of continuous employment.	- No provision.	- No provision.

Table 2 continued

Date and Statute	Daily and Weekly Hours: Maximum Hours	Daily and Weekly Hours: Time of Day	Daily and Weekly Hours: Eating Periods	Annual Paid Time-Off: Vacation	Annual Paid Time-Off: Public Holiday With Pay	Annual Paid Time-Off: Premium Pay
1968 Employment Standards Act, 1968	- 8 per day, 48 per week (i.e., the 1944 standard retained in new statute). - With the approval of the administrator, daily hours might exceed 8 if 48-hour weekly maximum observed.	- As in 1964, but coverage restricted to female employees under 18 years of age	- As in 1964, but exemption removed of young workers from approved periods of less than one-half hour.	- As in 1966.	- No provision.	- 1.5 X regular rate for work on 7 public holidays and for weekly hours in excess of 48.
1970 Employment Standards Amendment Act, 1970	- As in 1968.	- As in 1968.	- As in 1968.	- 1 week for first 12 months of employment, 2 weeks for each 12 months thereafter.	- No provision.	- As in 1968.
1973 Employment Standards Amendment Act, 1973	- As in 1968.	- As in 1968.	- As in 1968.	- 2 weeks with pay after each 12 months of employment.	- 4 and next day off with pay if Dominion Day or Christmas falls on a Sunday.	- 1.5 X regular rate for weekly hours over 44. 2.5 X regular rate for holidays worked.
1974 Employment Standards Act, 1974	- As in 1968, except where daily hours permitted to exceed 8, a maximum of 12 is imposed.	- All time-of-day limits on employment withdrawn.	- Every employer to provide eating periods of one-half hour, or a shorter period approved by the administrator, after a maximum of 5 consecutive hours of work.	- As in 1973.	- 7 days with pay and if holiday falls on a non-working day an alternate day off or holiday pay, i.e. 1.5 X time regular rate.	- As in 1973.
1986	- As in 1974	- As in 1974	- As in 1974.	- As in 1974.	- As in 1974.	- As in 1974.

Table 3
Coverage and Exemptions: Provisions Limiting Daily and Weekly Hours of work Under the Hours of Work and Vacations with Pay Act and the Employment Standards Act, 1944-86

Statute or Regulation	Coverage	Exemptions
1944		
Hours of Work and Vacations with Pay Act, 1944	- Employees in any establishment, undertaking, or work in or about any business industry or occupation. Excludes Crown employees.	- Employees doing entirely supervisory, managerial, or confidential work. - War industries designated by the administrator.
1945		
Ont. Regulation 92/45		- Employees "qualified in" and "engaged in the practice of" a profession, trade, or calling governed by the statutes named in Appendix B and students in training for them. - Persons employed in farming, commercial fishing, municipal fire departments, funeral directing and embalming, domestic service in private residences, and workers under Federal jurisdiction.
1950		
Ont. Regulation 144/50		- Employees and students under three additional Acts governing professions. Appendix B. - Employees engaged in the culture of flowers, fruit, and vegetables.
1952		
Ont. Regulation 102/52		- Persons employed under The Insurance Act, The Real Estate and Business Brokers Act, or selling goods or merchandise where hours of work are not verifiable.
1966		
Ont. Regulation 169/66		- Redefined: Profession or calling identified as "architecture," "dentistry," etc. rather than by governing Act. - Added: Fishing and hunting guides; taxi drivers; ambulance drivers and helpers; employees of small telephone companies; live-in superintendents, janitors, and caretakers in residential buildings; and employees of police departments.
1968		
Employment Standards Act, 1968, Effective 1/1/69, replacing the Hours of Work and Vacations with Pay Act, 1944	- Employees who work or supply services for an employer or do homework for an employer other than the Crown.	- Employees doing only supervisory or managerial work.

Table 3 continued

Statute or Regulation	Coverage	Exemptions
1968 (cont'd)		
Ont. Regulation 366/68		- Most regulatory exemptions granted from 1944 to 1968 continued. - Redefined: Farming and related exemptions, salesman, firemen, and policemen. - Withdrawn: Nurses, dental technicians, taxi drivers, ambulance drivers and helpers, and occupations under Federal jurisdiction. - Added: Construction workers, homeworkers, secondary school students in unpaid work experience programs, chiropody, and where approved hours-averaging agreements are in effect.
1970		
Employment Standards Amendment Act, 1970	- As in 1968, but "a person who receives instruction or training in an activity business, work, trade, occupation or profession of an employer" added.	
Ont. Regulation 515/70		- A person working in a university- or college-approved program.
1974		
Employment Standards Act, 1974	- "A person who was an employee" added to 1968 and 1970 coverage provisions.	
1975		
Ont. Regulation 803/75		- Further redefinition of farm-related and salesman exemptions; and supervisory and managerial exemption moved from Act to Regulation. - Withdrawn: Policemen and employees of small telephone companies.
1978		
Ont. Regulation 665/78		- Inmates of correctional institutions working in authorized work or rehabilitation programs and an offender performing work under a court order.
1986	- As developed in 1968, 1970 and 1974 above.	- As outlined above; see Appendix A, Reg. 285, for current exemptions.

most self-governing professions and several industries and occupations from the maximum hours provisions. There was a moderate increase in the number of such exemptions until 1968, when most were carried forward in regulations made under the Employment Standards Act and some important additions -- including the construction industry, homework, and certain categories of students -- were made.

Documentary evidence, if any existed, explaining the rationale for the original exemptions, seems to have been destroyed. Later the inability of employers to monitor hours worked by field salesmen and the uncertainty arising from weather conditions and irregularity of employment in construction were central arguments underlying these exemptions. Relying on the experience of officers of the Employment Standards Branch and others in the Ministry of Labour, however, the basic grounds for exemption can be stated with a fair degree of certainty. Important among them are:

- irregular, on-call or discontinuous hours;
- inability of the employer to measure hours worked;
- variable or peak workloads arising from uncontrollable factors, such as the weather, seasons, biological processes, market changes, and livestock or crop epidemics;
- emergency or urgent work, such as firefighting, harvesting crops, and some medical attention;
- strong bargaining position of the exempted worker based on skill, high level of responsibility, and/or organization;
- maintenance of independence and status of managerial, professional, and skilled groups;
- the high cost of observing hours standards where they are most awkward to meet; and
- uncertainty about the employment status of some workers.

In addition, the presence of a high proportion of self-employed people in an industry or occupation seems to be a major contributing factor to gaining exemption. This reflects difficulty in coping with a mixed (self-employed and paid-employee) labour force, such as in farming, and maintenance of equal status among members of a

profession. Exceptions tend to occur where one or more of the above characteristics is combined with effective representation (sound reasons and/or political influence) of the need. The number must be limited, however, to ensure the credibility of the legislation and prevent the development of much stronger resistance to it than already exists.

The minimum age of employment, an aspect of coverage given a great deal of attention when child labour was an issue, is omitted from Tables 2 and 3. It is not referred to in the legislation described in these tables. The relevant provisions of the Factory, Shop and Office Building Act applied until 1964. In that year, they were moved into the new safety legislation. The Industrial Safety Act, 1964, defined children as persons under 15 years of age and prohibited their employment in industrial undertakings. However, it permitted a child 14 years of age to be employed in a shop or office. In 1979, these provisions, along with those of mining and construction minimum age requirements, were transferred to regulations made under the Occupational Health and Safety Act and are now as follows:

- logging operations -- 16 years;
- factory other than logging -- 15 years;
- workplaces other than factories -- 14 years;
- mining plant or surface mine excluding the working face -- 16 years;
- underground mine or working face of surface mine -- 18 years; and
- in or about a construction project -- 15 years if school attendance requirements complied with.

Excess Hours:

Permission to work hours in excess of those specified in a maximum standard has been a characteristic of Ontario hours control legislation since 1884. The practice gives covered workers and employers an opportunity to extend hours of work in certain situations, although, almost always within defined limits. It may also reduce the pressure of demands for exemptions from hours control

legislation below what it would be, if some relief from the standard were not available to those covered, that is, if the legislation had less built-in flexibility there would almost certainly be greater demand for outright exemption.

When the Hours of Work and Vacations with Pay Act was introduced, excess hours permits were seen as one means of achieving the flexible administration the government believed necessary for the successful use of a comprehensive maximum-hours requirement. Accordingly, several circumstances in which the 8-hour day and 48-hour week limits might be breached were described in the statute (see Table 4). In addition, authority was given to make regulations:

> ...prescribing industrial undertakings and branches thereof in which the working hours prescribed by subsection 1 of section 2 of the Hours of work and Vacations with Pay Act, 1944 (which defines the standard) may be exceeded either by specified times or under specified conditions or generally, prescribing, in each case, the maximum of such excess and imposing terms and conditions in connection therewith.

Relying on the authority cited, the government moved immediately to establish two types of excess hours permits. With only minor modifications, they have remained the principal instruments of flexible administration of the maximum-hours standard for the past 40 years.

One of the permits is universally available on application to covered employers. No explanation is required as to why the excess hours are needed, and employers are free to use them as they sees fit. For the first 18 months that the standard was in place, this permit provided 120 hours of overtime in a calendar year. On January 1, 1946, it was changed to give 100 excess hours "in each calendar year to each employee" other than engineers, firemen, watchmen, shippers, and "others engaged in non-productive work" who were allowed to work 12 hours in excess of the standard each week. Since that time, four occupations (full-time maintenance workers, receivers, delivery truck drivers, and their helpers) have been added to those specified under the provision of 12 overtime hours per week, and the "non-productive" description has become "similar

Table 4
Authority for Working Hours in Excess of Maximum Under Hours of Work and Vacations with Pay Act and Employment Standards Act, 1944-86

Statute or Regulation	Excess Hours Authority
1944	
Hours of work and Vacations with Pay Act, 1944	- * Authorized in case of an accident, urgent work required on plant or equipment, or by force majeure, that is, emergency overtime. - Permitted, with administrator's approval, where employees and employer agree to alternate hours because maximum not "feasible" to apply.
Ont. Regulation 8/44	- 120 excess hours per year granted on written request by employer, and number not reduced by emergency overtime. - * Permitted where "nature of the work" or "perishable nature of the raw material being processed" requires longer hours than authorized by standard and administrator agrees -- "Special Permit." - * Employee may refuse to perform approved overtime work.
1945	
Ont. Regulation 92/45	- * "100 Hour Permit" introduced, making 100 overtime hours per employee per year and 12 hours per week for "non-productive" workers (watchmen, engineers, shippers, etc.) available on request. (120 hour permit withdrawn.)
1950	
Ont. Regulation 144/50	- * Excess hours approved under an Industrial Standards Act schedule not considered a contravention of the standard.

Table 4 continued

Statute or Regulation	Excess Hours Authority
1964	
Hours of Work and Vacations with Pay Amendment Act, 1964	- Six hours per week limit placed on excess hours worked by "young persons" (under 18 years of age.)
1968	
Employment Standards Act. 1969	- Authority for emergency overtime (ommitted force majeure), "100 Hour Permit," "Special Permit," priority of Industrial Standards schedules, and worker's right to refuse (* 1944 above) incorporated into new Employment Standards Act. - Six-hour weekly limit on overtime for young persons (1964 above) restricted to females. - Employer and employee agreements to exceed standard prohibited.
1974	
Employment Standards Act, 1974	- Six hours per week overtime limit for young females removed (1968 above).
1986	
	- Excess hours authority as described in 1968 and 1974 above.

* Denotes incorporated into Employment Standards Act of 1969.

occupation." Otherwise, the permit specifies the same limits and is issued on the same conditions as it was in 1946. It is known as the "Blue" or "100 Hour Permit" and is self-renewing annually; that is, once issued it remains valid until surrendered or withdrawn by the administrator of the Act. From 1948-49 to 1985-86 (fiscal years), an estimated 35,939 initial "100 Hour Permits" were issued, of which 435 were given in the 1985-86 fiscal year.

The second permit defined in the regulations is available where "the work or the perishable nature of the raw material being processed requires hours of work in excess of those permitted" under the standard. This permission is not available without justification and requires that the administrator be satisfied that it is needed. In addition, it specifies the employees who may work the excess hours and the number available in a defined period. The strongest ground for securing this "Special Permit" is a well-documented labour shortage, but other grounds, having to do with such matters as urgency of work and inflexibility of plant, are also considered. Special Permits are valid for a maximum of 12 months and terminate at the end of the calendar year whether or not all the excess hours approved in them have been worked. By following this practice, there is coordination of the overtime authorized under the 100 Hour and Special permits. The expectation is that all of the hours available under the former will be used before those granted under the latter are drawn on.

One-hundred-hour and Special permits have been relied on heavily in operating the maximum hours standard. Neither of them reduces the number of emergency overtime hours available to an employer to deal with accidental and emergency maintenance situations. That is, the permitted hours are available for extending the <u>normal</u> production time of a workforce. These permits and their extension to industry-wide permits is discussed further in the companion paper on administration, "Current Administration of Legislated Standards of Hours of Work in Ontario."

Table 4 notes that employees subject to excess hours permits have a right to refuse to work the approved overtime. Presumably,

this means that such a refusal is not subject to a penalty of any kind, a condition that may be exceedingly difficult to ensure where workers are not organized. There is some concern among exempted workers that they are deprived of this right. Workers in public accounting and engineering, both exempted occupations, have expressed interest in the matter but the issue has not been forced. In industries such as farming and fishing, and in some professions, the idea of granting a right-to-refuse overtime work creates deep anxiety for employers, and the matter has been sharply contested in connection with the exemption covering embalmers. Despite these varied interests in employees having a legal right to refuse work in excess of the maximum hours standard and some general knowledge of it being exercised in unionized plants, there is no clear evidence that it is of practical benefit to unorganized workers, especially those in relatively small establishments.

SUMMARY

- Government intervention in hours-of-work legislation in Ontario has occurred in two distinct phases: (1) from the passage of the Ontario Factories Act in 1984 up to 1944, and (2) from 1944 to the present.

- The first period of intervention was motivated by concerns over protecting the health and safety of women and youths (the only groups covered). Coverage was also limited to specific sectors (factories, and later shops and mines).

- This early legislation generally specified a maximum of 10 hours per day and 60 per week in factories, and later in shops. Although this reflected the typical working hours in the early period, it obviously became dated over time as average hours decreased.

- While the legislative maximum of 10 hours per day and 60 hours per week may appear to be more than a minimum safety net in the early period (since it was about <u>equal</u> to the <u>average</u> hours worked), the coverage was limited to women and children, who

were perceived to be in need of more protection than what was provided in the average situation.

- The early legislation also had some restrictions against night work for women and children as well as specific allotments for meal times. It also required that the hours provisions be posted in a conspicuous place.

- The second period of intervention, beginning with the Hours of Work and Vacations with Pay Act, 1944 was motivated less by a desire to protect the health and safety of women and children and more by a desire to share the work among the returning troops and to provide a minimum standard (safety net) for all workers who have little individual or collective bargaining power. The coverage, therefore, was much more comprehensive across employees and sectors. The sustained prosperity after the war, however, led to a reduction in the need for spreading the work available among more jobs; hence, the objective of the legislation tended to focus on the provision of minimum standards.

- The new legislation of 1944 provided for maximum hours of 8 per day and 48 per week. This affected a substantial portion of the workforce both because the coverage of the new legislation was extensive (not just limited to women and children) and the average workweek was not much above 48 hours. In fact, in 1942-43, just prior to the legislation, about 60 per cent of the covered male workforce and 50 per cent of the covered female workforce worked over 48 hours per week.

- The 1944 legislation also introduced an entirely new standard-- vacations with pay (which was common practice in industry).

- The legislation also emphasized flexibility by allowing the Industry and Labour Board to exempt certain industries and occupations. Also, the 8-hour day could be exceeded where longer hours were the "custom."

- In 1968, the new Employment Standards Act, which consolidated the previous hours-of-work legislation with other employment standards (e.g., minimum wages, equal pay, termination procedures), introduced an overtime premium of 1.5 after 48 hours and on 7 public holidays when worked. The 8-hour day could be exceeded with the approval of the administration.

- In 1973, the overtime premium was to commence after 44, not 48, hours per week, and total pay for holidays worked became 2.5 times the regular rate.

- In 1974, the administration's discretion to exceed the 8-hour day maximum was limited to a 12-hour day.

- Annual vacations with pay were introduced as follows: 1 week after 1 year in 1944; 1 after 1, 2 after 3 in 1966; 1 after 1, 2 after 2 in 1970; and 2 after 1 in 1973.

- In 1973, 4 statutory paid holidays were allowed; in 1974, this was increased to 7.

- The hours-of-work and paid time-off provisions of the legislation have not changed since 1974.

- Although the 1944 legislation extended coverage from women and youths to the general workforce, the dictum of flexibility also led to numerous groups being exempt and the exemptions often deferred for the different provisions pertaining to maximum hours, vacations with pay, and the overtime premium.

- The main groups that were not covered or were exempt from the 1944 legislation were: Crown employees, employees under federal jurisdiction, managers and supervisors, and employees in war industries. Subsequent changes in regulations or legislation also exempted most professionals, employees in farming, fishing, firefighting, funeral directing and embalming, domestic service, insurance and real estate agents,

construction workers, students in certain programs, and employees where approved averaging agreements are in effect.

- Rationales for exemptions included: difficulty of establishing or measuring regular hours; inevitable variability in hours arising from such factors as weather, seasons, or emergencies; absence of need to provide protection to some with sufficient bargaining power; and political ability of the employers to obtain an exemption.

- Flexibility was also to be attained through two types of permits that were established in the 1944 legislation: (1) the excess hours permit (120 hours per year in 1944, changed to 100 hours in 1945) granted to employers on request, and (2) special annual permits granted under specific circumstances for specific employees.

NOTES

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6. Canada, Department of Labour, The Labour Gazette (May 1944).
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12. Hansard, op. cit., pp. 2364 - 68.
13. Ibid., p. 2271.
14. Labour Standards Act, 1968 - Background Memorandum (Toronto: Department of Labour, January 25, 1968).
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16. Canada, Working Conditions in Canadian Industry, (Ottawa: Labour Canada, 1983).
17. Ibid.
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REGULATION 285

under the Employment Standards Act

GENERAL

INTERPRETATION

1. In this Regulation,

(a) "construction" includes all work in and about the construction, erection, demolition, repair, remodelling, decoration or alteration of the whole or any part of a building, or structure, the laying of pipe and conduit above or below ground level, excavating, tunnelling, fencing, grading, paving, land clearing, bridging, street and highway building, but does not include work done by a person who is regularly employed by a manufacturing, industrial or service institution performing maintenance work on the premises of his employer;

(b) "domestic servant" means a person who is employed by a householder,

(i) as a sitter to attend primarily to the needs of a child who is a member of the household,

(ii) as a companion to attend to the needs of an aged, infirm or ill member of the household, or

(iii) as a domestic to perform services in the household who works twenty-four hours a week or less;

(c) "hotel, motel, tourist resort, restaurant and tavern" means every establishment furnishing for payment, accommodation, lodging, meals or beverages, and includes hotels, motels, motor hotels, tourist homes, tourist camps, tourist cabins and cottages, tourist inns, catering establishments and all other establishments of a similar nature;

(d) "learner" means a person who has not had previous experience in the kind of work that he is hired for or that he performs;

(e) "lodging" means the provision of a room and three meals per day for a seven-day week;

(f) "road building" means the preparation, construction, reconstruction, repair, alteration, remodelling, renovation, demolition, finishing and maintenance of streets, highways or parking lots, including structures such as bridges, tunnels or retaining walls in connection with streets or highways, and all foundations, installation of equipment, appurtenances and work incidental thereto;

(g) "room" means a room that is reasonably furnished and reasonably fit for human habitation, is supplied with clean bed linen and towels and is reasonably accessible to proper toilet and wash-basin facilities;

(h) "seasonal employee" means an employee who works not more than sixteen weeks in a calendar year for an employer;

(i) "taxi cab" means a vehicle, with seating accommodation for not more than nine persons exclusive of the driver, used for the carriage for hire of persons. R.R.O. 1980, Reg. 285, s. 1.

APPLICATION OF ACT

2.—(1) The Act does not apply to,

(a) a secondary school student who performs work under a work experience program authorized by the school board of the school in which he is enrolled;

(b) a person who performs work under a program approved by a community college or university;

(c) an inmate of a correctional institution who participates inside or outside the institution in a work project or rehabilitation program authorized under the *Ministry of Correctional Services Act*; or

(d) an offender who performs work or services under an order or sentence of a court.

(2) Where, under an agreement or arrangement between an employee and his employer approved by the Director, a period of two or more work weeks is the period in which the hours of work of an employee may be averaged for the purpose of determining the hours of work in each work week in the period,

(a) section 17 of the Act does not apply; and

(b) subsection 25 (1) of the Act does not apply to the hours of work in a work week where such averaged hours do not exceed forty-four. R.R.O. 1980, Reg. 285, s. 2.

EXEMPTIONS FROM PARTS IV TO VIII OF ACT

3. Parts IV, V, VI, VII and VIII of the Act do not apply to a person employed

(a) as a duly qualified practitioner of,

(i) architecture,

(ii) chiropody,

(iii) dentistry,

(iv) law,

(v) medicine,

(vi) optometry,

(vii) pharmacy,

(viii) professional engineering,

(ix) psychology,

(x) public accounting,

(xi) surveying, or

(xii) veterinary science;

(b) as a duly registered drugless practitioner;

(c) as a teacher as defined in the *Teaching Profession Act*;

(d) as a student in training for the professions or callings mentioned in clause (a), (b) or (c);

(e) in commercial fishing;

(f) as a domestic servant; or

(g) as a registered salesman of a broker registered under the *Real Estate and Business Brokers Act*;

(h) as a salesman, other than a route salesman, who is entitled to receive all or any part of his remuneration as commissions in respect of offers to purchase or sales of goods, wares, merchandise or services and which offers or sales are normally made at a place other than the place of business of his employer; or

(i) on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep and poultry. R.R.O. 1980, Reg. 285, s. 3.

EXEMPTIONS FROM PART IV OF ACT

HOURS OF WORK

4. Part IV, except section 22, of the Act does not apply to a person employed,

(a) as a full-time firefighter as defined in the *Fire Departments Act*;

(b) whose only work is supervisory or managerial in character;

(c) as a fishing or hunting guide;

(d) to work in construction;

(e) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the wholesale and retail trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes;

(f) to perform homework;

(g) as a superintendent, janitor or caretaker of a residential building and who resides in the building, or

(h) as an embalmer or funeral director.

R.R.O. 1980, Reg. 285, s. 4.

EXEMPTIONS FROM PART V OF ACT

MINIMUM WAGES

5. Part V of the Act does not apply to a person employed,

(a) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program;

(b) as a student to instruct or supervise children;

(c) as a student at a camp for children;

(d) as a superintendent, janitor or caretaker of a residential building who resides in the building;

(e) as a trainee in a course leading to registration as a registered nursing assistant under the *Health Disciplines Act*;

(f) as a trainee in a course of study for a laboratory technologist as required by the Canadian Society of Laboratory Technologists; or

(g) as a trainee in a course of study for a radiological technician as required by the Canadian Association of Radiological Technicians. R.R.O. 1980, Reg. 285, s. 5.

EXEMPTIONS FROM PART VI OF ACT

OVERTIME PAY

6. Part VI of the Act does not apply to a person employed,

(a) as a full-time firefighter as defined in the *Fire Departments Act*;

(b) whose only work is supervisory or managerial in character;

(c) as a fishing or hunting guide;

(d) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the retail and wholesale trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes;

(e) to perform homework;

(f) as a student to instruct or supervise children;

(g) as a student at a camp for children;

(h) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program;

(i) as a superintendent, janitor or caretaker of a residential building and who resides in the building; or

(j) as a taxi cab driver

R.R.O. 1980, Reg. 285, s. 6

EXEMPTIONS FROM PART VII OF ACT

PUBLIC HOLIDAYS

7.—(1) Part VII of the Act does not apply to a person employed,

(a) as a full-time firefighter as defined in the *Fire Departments Act*,

(b) as a fishing or hunting guide;

(c) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the retail and wholesale trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes;

(d) to perform homework;

(e) as a student to instruct or supervise children;

(f) as a student at a camp for children;

(g) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program;

(h) as a superintendent, janitor or caretaker of a residential building and who resides in the building;

(i) as a taxi cab driver; or

(j) as a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern who is provided with room and board.

(2) An employee who works in construction and receives 7 per cent or more of his hourly rate or wages for vacation pay or holiday pay is exempt from Part VII of the Act.

SUBSTITUTED DAY

(3) Where an employer, with the agreement of an employee to whom section 26 of the Act does not apply, substitutes or designates a day for a public holiday, the day so substituted or designated shall be the public holiday for the purposes of section 27 of the Act. R.R.O. 1980, Reg. 285, s. 7.

EXEMPTIONS FROM PART VIII OF ACT

VACATION PAY

8. Part VIII of the Act does not apply to a person employed,

(a) as a trainee in a course leading to registration as a registered nursing assistant under the *Health Disciplines Act*;

(b) as a trainee in a course of study for a laboratory technologist as required by the Canadian Society of Laboratory Technologists; or

(c) as a trainee in a course of study for a radiological technician as required by the Canadian Association of Radiological Technicians. R.R.O. 1980, Reg. 285, s. 8.

Appendix B

Acts Governing Professions Exempted from the Hours of Work and Vacations with Pay Act:

1945 The Barristers Act
The Solicitors Act
The Medical Act
The Dentistry Act
The Pharmacy Act
The Drugless Practitioners Act
The Nurses' Registration Act
The Ontario Land Surveyors Act
The Architects Act
The Chartered Shorthand Reports Act
The Chartered Accountants Act
The Certified Public Accountants Act
The Professional Engineers Act
The Veterinary Science Practice Act
The Optometry Act

1950 The Dental Technicians Act
The Public Accountancy Act
The Teaching Profession Act

Table 2
Statutory Requirements Controlling Hours of Work in Ontario, Enacted 1944-86

Date and Statute	Daily and Weekly Hours	
	Maximum Hours	Time of Day
1944		
Hours of Work and Vacations with Pay Act, 1944	- 8 per day, 48 per week. - Reg. 8/44 permitted daily maximum to be exceeded where longer hours were the "custom or practice" or a work week of less than 6 days was established.	- No provision. - Until 1964, regulated by the Factory, Shop and Office Building Act. (Table 1).
1964		
Hours of work and Vacations with Pay Amendment Act, 1964	- Where more than one employer, no person under 18 years of age to work more than a total of 8 hours in a day for both or all.	- Young persons (under 18 years) and women prohibited from working after midnight and before 6:00 a.m. unless authorized by the Minister.
1966		
Hours of work and Vacations with Pay Amendment Act, 1966	- As above.	- As above.

Table 2 continued

	Annual Paid Time-Off		
Eating Periods	Vacation	Public Holiday With Pay	Premium Pay
- No provision. - Until 1964, regulated by the Factory, Shop and Office Building Act.	- 1 week anually after first year of employment.	- No provision.	- No provision.
- One-half hour after 5 consecutive hours of work, but, for all except "young person's, shorter lunch periods permitted if already the practice, & approved by administrator.	- As above.	- No provision.	- No provision.
- As above.	- 1 week annually during first 3 years of employment. - 2 weeks annually after 3 years of continuous employment.	- No provision.	- No provision.

Table 2 continued

	Annual Paid Time-Off		
Eating Periods	Vacation	Public Holiday With Pay	Premium Pay
- As in 1964, but exemption removed of young workers from approved periods of less than one-half hour.	- As in 1966.	- No provision.	- 1.5 X regular rate for work on 7 public holidays and for weekly hours in excess of 48.
- As in 1968.	- 1 week for first 12 months of employment, 2 weeks for each 12 months thereafter.	- No provision.	- As in 1968.
- As in 1968.	- 2 weeks with pay after each 12 months of employment.	- 4 and next day off with pay if Dominion Day or Christmas falls on a Sunday.	- 1.5 X regular rate for weekly hours over 44. 2.5 X regular rate for holidays worked.
- Every employer to provide eating periods of one-half hour, or a shorter period approved by the administrator, after a maximum of 5 consecutive hours of work.	- As in 1973.	- 7 days with pay and if holiday falls on a non-working day an alternate day off or holiday pay, i.e. 1.5 X time regular rate.	- As in 1973.
- As in 1974.	- As in 1974.	- As in 1974.	- As in 1974.

Table 2 continued

Date and Statute	Daily and Weekly Hours: Maximum Hours	Daily and Weekly Hours: Time of Day
1968		
Employment Standards Act, 1968	- 8 per day, 48 per week (i.e., the 1944 standard retained in new statute). - With the approval of the administrator, daily hours might exceed 8 if 48-hour weekly maximum observed.	- As in 1964, but coverage restricted to female employees under 18 years of age
1970		
Employment Standards Amendment Act, 1970	- As in 1968.	- As in 1968.
1973		
Employment Standards Amendment Act, 1973	- As in 1968.	- As in 1968.
1974		
Employment Standards Act, 1974	- As in 1968, except where daily hours permitted to exceed 8, a maximum of 12 is imposed.	- All time-of-day limits on employment withdrawn.
1986	- As in 1974	- As in 1974

Table 1
Statutory Requirements Governing Hours of Work in Ontario Factories and Shops, 1884-1964

Date and Statute	Coverage of Statute	Coverage of Hours
1884		
Ontario Factories Act, 1884	- "Operatives in factories and like places." - Excluded: persons doing repair work, factories employing 20 or fewer workers (reduced to 5 in 1889), factories in homes employing only family and not using steam, water, or mechanical power.	- Children (persons under 14 years of age), young girls (females 14 but under 18 years), and women (females of 18 years or more). - Males 14 years or over not covered.
1888		
Shops Regulation Act	- Employees working in buildings, booths, stalls, or other places where goods handled, exposed, or offered for sale.	- Young persons (males under 14 and females under 16 years).
1897		
Ontario Shops Regulation Act, 1897	- As for 1888 plus places where goods made if not covered by Factories Act. - Excluded: tobacconists, news agents, hotels, inns, taverns, and laundries not using steam, water, or electric power.	- Children, young girls and women (defined in 1884 above).
1913		
Factory, Shop and Office Building Act, 1913 (replaced all earlier factory and shop legislation)	- Employees in factories, shops, and offices. - Excluded: factories with 5 or fewer employees using only manual power, home laundries, shops attached to owner's family dwelling and employing only family.	- Children, young girls and women (defined in 1884 above) and youths (males 14 but under 16 years of age) employed in factories and shops.

Table 1 continued

Minimum Age	Maximum Hours	Time of Day
- Males: 12 years. - Females: 14 years. - Younger children might gather fruit and vegetables for canning but not to work in cooking room.	- 10 hours per day and 60 hours per week. - Daily maximum might be exceeded if weekly maximum observed. - Week: midnight Sunday to midnight following Saturday.	- None specified. - Notice of the hours between which a child, young girl, or woman might work signed by the government inspector and employer to be displayed in a conspicuous place.
- None specified.	- Daily: 12 hours Monday to Friday, 14 hours on Saturday. - Weekly: 74 hours. - Daily maximum might be exceeded, but 74-hour weekly maximum to be observed.	- None specified. - Notice showing daily hours of work to be posted.
- 10 years, both sexes.	- No maximum specified, but see "Time of Day" entry.	- 7:00 a.m. to 6:00 p.m. Monday to Friday including 1 hour for lunch. - 7:00 a.m. to 10:00 p.m. Saturday or one other day of week including 1 hour and 45 minutes for eating periods.
- Both sexes: 14 years in factories and 12 years in shops, but 14 years during school hours. Canning exemption: children 12-14 maybe employed; under 12 may be employed out of doors to gather and prepare produce from June 15 to Sept. 15.	- Factories and shops: 10 hours per day, 60 hours per week.	- Factories: 7:00 a.m. 6:30 p.m. - Shops: 7:00 a.m. to 6:00 p.m. Monday to Friday; 7:00 a.m. to 10:00 p.m. on Saturday, day preceding a holiday. - Children not to be employed during school hours without permit under Truancy Act.

Table 1 concluded

Minimum Age	Maximum Hours	Time of Day
- In factories, as for 1913. - In shops, 14 years.	- As for 1913.	- As for 1913. - Persons 14 years to 16 years of age excluded from work between 8:00 a.m. and 5:00 p.m. on school days, Adolescent School Attendance, Act, 1919.
- 14 years -- both sexes in both factories and shops. - Canning exemption (1913) removed.	- 10 per day, 60 per week in both factories and shops -- same as 1913.	- As for 1913 and 1921.
- As for 1929.	- As for 1929.	- As for 1913 and 1921 but shop hours extended to 11:00 p.m. Monday to Friday.
- As for 1929.	- Hours provisions replaced by 8 daily, 48 weekly of Hours of Work and Vacations with Pay Act, 1944 (Table 2).	- As for 1932, but Minister may exempt women and young workers from time-of-day restrictions.
- Moved to Industial Safety Act, See text.	- As for 1953.	- Provision moved to Hours of Work and Vacations with Pay Act.

Table 1 continued

Date and Statute	Coverage of Statute	Coverage of Hours
1921		
Factory, Shop and Office Building Amendment Act, 1921	- As for 1913.	- As for 1913.
1929		
Factory, Shop and Office Building Act, 1929	- Employees in factories, shops and offices. - Excluded: home laundries, and shops attached to owner's family dwelling and employing only family members.	- Youth, young girls, and women as defined in 1884 and 1913. - Employment of children prohibited.
1932		
Factory, Shop and Building Act, 1932	- As for 1929.	- As for 1929.
1953		
Factory, Shop and Office Building Amendment Act, 1953	- As for 1929.	- As for 1929.
1964		
	- Factory, Shop and Office Building Act repealed.	

EXEMPTIONS FROM PARTS IV TO VIII OF ACT

3. Parts IV, V, VI, VII and VIII of the Act do not apply to a person employed

(a) as a duly qualified practitioner of

(i) architecture,

(ii) chiropody,

(iii) dentistry,

(iv) law,

(v) medicine,

(vi) optometry,

(vii) pharmacy,

(viii) professional engineering,

(ix) psychology,

(x) public accounting,

(xi) surveying, or

(xii) veterinary science,

(b) as a duly registered drugless practitioner,

(c) as a teacher as defined in the *Teaching Profession Act*,

(d) as a student in training for the professions or callings mentioned in clause (a), (b) or (c),

(e) in commercial fishing,

(f) as a domestic servant, or

(g) as a registered salesman of a broker registered under the *Real Estate and Business Brokers Act*,

(h) as a salesman, other than a route salesman, who is entitled to receive all or any part of his remuneration as commissions in respect of offers to purchase or sales of goods, wares, merchandise or services and which offers or sales are normally made at a place other than the place of business of his employer, or

(i) on a farm whose employment is directly related to the primary production of eggs, milk, grain, seeds, fruit, vegetables, maple products, honey, tobacco, pigs, cattle, sheep and poultry. R.R.O. 1980, Reg. 285, s. 3.

EXEMPTIONS FROM PART IV OF ACT

HOURS OF WORK

4. Part IV, except section 22, of the Act does not apply to a person employed,

(a) as a full-time firefighter as defined in the *Fire Departments Act*,

(b) whose only work is supervisory or managerial in character,

(c) as a fishing or hunting guide,

(d) to work in construction,

(e) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the wholesale and retail trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes,

(f) to perform homework,

(g) as a superintendent, janitor or caretaker of a residential building and who resides in the building, or

(h) as an embalmer or funeral director.

R.R.O. 1980, Reg. 285, s. 4.

EXEMPTIONS FROM PART V OF ACT

MINIMUM WAGES

5. Part V of the Act does not apply to a person employed,

(a) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program,

(b) as a student to instruct or supervise children,

(c) as a student at a camp for children,

(d) as a superintendent, janitor or caretaker of a residential building who resides in the building,

(e) as a trainee in a course leading to registration as a registered nursing assistant under the *Health Disciplines Act*,

(f) as a trainee in a course of study for a laboratory technologist as required by the Canadian Society of Laboratory Technologists; or

(g) as a trainee in a course of study for a radiological technician as required by the Canadian Association of Radiological Technicians. R.R.O. 1980, Reg. 285, s. 5.

EXEMPTIONS FROM PART VI OF ACT

OVERTIME PAY

6. Part VI of the Act does not apply to a person employed.

(a) as a full-time firefighter as defined in the *Fire Departments Act*,

(b) whose only work is supervisory or managerial in character;

(c) as a fishing or hunting guide;

(d) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the retail and wholesale trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes;

(e) to perform homework;

(f) as a student to instruct or supervise children;

(g) as a student at a camp for children;

(h) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program;

(i) as a superintendent, janitor or caretaker of a residential building and who resides in the building; or

(j) as a taxi cab driver.

R.R.O. 1980, Reg. 285, s. 6.

EXEMPTIONS FROM PART VII OF ACT

PUBLIC HOLIDAYS

7.—(1) Part VII of the Act does not apply to a person employed

(a) as a full-time firefighter as defined in the *Fire Departments Act*;

(b) as a fishing or hunting guide;

(c) in,

(i) landscape gardening,

(ii) mushroom growing,

(iii) the growing of flowers for the retail and wholesale trade,

(iv) the growing, transporting and laying of sod,

(v) the growing of trees and shrubs for the retail and wholesale trade,

(vi) the breeding and boarding of horses on a farm, or

(vii) the keeping of fur-bearing animals as defined in the *Fur Farms Act*, for propagation or the production of pelts for commercial purposes;

(d) to perform homework;

(e) as a student to instruct or supervise children;

(f) as a student at a camp for children;

(g) as a student in a recreational program operated by a charitable organization registered as a charitable organization in Canada under Part I of the *Income Tax Act* (Canada), where the work or duties of the student are directly connected with the recreational program;

(h) as a superintendent, janitor or caretaker of a residential building and who resides in the building;

(i) as a taxi cab driver; or

(j) as a seasonal employee in a hotel, motel, tourist resort, restaurant or tavern who is provided with room and board

(2) An employee who works in construction and receives 7 per cent or more of his hourly rate or wages for vacation pay or holiday pay is exempt from Part VII of the Act.

SUBSTITUTED DAY

(3) Where an employer, with the agreement of an employee to whom section 26 of the Act does not apply, substitutes or designates a day for a public holiday, the day so substituted or designated shall be the public holiday for the purposes of section 27 of the Act. R.R.O. 1980, Reg. 285, s. 7.

EXEMPTIONS FROM PART VIII OF ACT

VACATION PAY

8. Part VIII of the Act does not apply to a person employed,

(*a*) as a trainee in a course leading to registration as a registered nursing assistant under the *Health Disciplines Act*;

(*b*) as a trainee in a course of study for a laboratory technologist as required by the Canadian Society of Laboratory Technologists; or

(*c*) as a trainee in a course of study for a radiological technician as required by the Canadian Association of Radiological Technicians. R.R.O. 1980, Reg. 285, s. 8.

REGULATION 285

under the Employment Standards Act

GENERAL

INTERPRETATION

1. In this Regulation,

(a) "construction" includes all work in and about the construction, erection, demolition, repair, remodelling, decoration or alteration of the whole or any part of a building, or structure, the laying of pipe and conduit above or below ground level, excavating, tunnelling, fencing, grading, paving, land clearing, bridging, street and highway building, but does not include work done by a person who is regularly employed by a manufacturing, industrial or service institution performing maintenance work on the premises of his employer;

(b) "domestic servant" means a person who is employed by a householder,

(i) as a sitter to attend primarily to the needs of a child who is a member of the household,

(ii) as a companion to attend to the needs of an aged, infirm or ill member of the household, or

(iii) as a domestic to perform services in the household who works twenty-four hours a week or less,

(c) "hotel, motel, tourist resort, restaurant and tavern" means every establishment furnishing for payment, accommodation, lodging, meals or beverages, and includes hotels, motels, motor hotels, tourist homes, tourist camps, tourist cabins and cottages, tourist inns, catering establishments and all other establishments of a similar nature;

(d) "learner" means a person who has not had previous experience in the kind of work that he is hired for or that he performs;

(e) "lodging" means the provision of a room and three meals per day for a seven-day week;

(f) "road building" means the preparation, construction, reconstruction, repair, alteration, remodelling, renovation, demolition, finishing and maintenance of streets, highways or parking lots, including structures such as bridges, tunnels or retaining walls in connection with streets or highways, and all foundations, installation of equipment, appurtenances and work incidental thereto;

(g) "room" means a room that is reasonably furnished and reasonably fit for human habitation, is supplied with clean bed linen and towels and is reasonably accessible to proper toilet and wash-basin facilities;

(h) "seasonal employee" means an employee who works not more than sixteen weeks in a calendar year for an employer;

(i) "taxi cab" means a vehicle, with seating accommodation for not more than nine persons exclusive of the driver, used for the carriage for hire of persons. R.R.O. 1980, Reg. 285, s. 1.

APPLICATION OF ACT

2.—(1) The Act does not apply to,

(a) a secondary school student who performs work under a work experience program authorized by the school board of the school in which he is enrolled;

(b) a person who performs work under a program approved by a community college or university;

(c) an inmate of a correctional institution who participates inside or outside the institution in a work project or rehabilitation program authorized under the *Ministry of Correctional Services Act*; or

(d) an offender who performs work or services under an order or sentence of a court.

(2) Where, under an agreement or arrangement between an employee and his employer approved by the Director, a period of two or more work weeks is the period in which the hours of work of an employee may be averaged for the purpose of determining the hours of work in each work week in the period,

(a) section 17 of the Act does not apply; and

(b) subsection 25 (1) of the Act does not apply to the hours of work in a work week where such averaged hours do not exceed forty-four. R.R.O. 1980, Reg. 285, s. 2.

Table 3
Coverage and Exemptions: Provisions Limiting Daily and Weekly Hours of work Under the Hours of Work and Vacations with Pay Act and the Employment Standards Act, 1944-86

Statute or Regulation	Coverage
1944	
Hours of Work and Vacations with Pay Act, 1944	- Employees in any establishment, undertaking, or work in or about any business industry or occupation. Excludes Crown employees.
1945	
Ont. Regulation 92/45	
1950	
Ont. Regulation 144/50	
1952	
Ont. Regulation 102/52	
1966	
Ont. Regulation 169/66	
1968	
Employment Standards Act, 1968, Effective 1/1/69, replacing the Hours of Work and Vacations with Pay Act, 1944	- Employees who work or supply services for an employer or do homework for an employer other than the Crown.

Table 3 continued

Exemptions
- Employees doing entirely supervisory, managerial, or confidential work. - War industries designated by the administrator.
- Employees "qualified in" and "engaged in the practice of" a profession, trade, or calling governed by the statutes named in Appendix B and students in training for them. - Persons employed in farming, commercial fishing, municipal fire departments, funeral directing and embalming, domestic service in private residences, and workers under Federal jurisdiction.
- Employees and students under three additional Acts governing professions. Appendix B. - Employees engaged in the culture of flowers, fruit, and vegetables.
- Persons employed under The Insurance Act, The Real Estate and Business Brokers Act, or selling goods or merchandise where hours of work are not verifiable.
- Redefined: Profession or calling identified as "architecture," "dentistry," etc. rather than by governing Act. - Added: Fishing and hunting guides; taxi drivers; ambulance drivers and helpers; employees of small telephone companies; live-in superintendents, janitors, and caretakers in residential buildings; and employees of police departments.
- Employees doing only supervisory or managerial work.

Table 3 continued

Statute or Regulation	Coverage
1968 (cont'd)	
Ont. Regulation 366/68	
1970	
Employment Standards Amendment Act, 1970	- As in 1968, but "a person who receives instruction or training in an activity business, work, trade, occupation or profession of an employer" added.
Ont. Regulation 515/70	
1974	
Employment Standards Act, 1974	- "A person who was an employee" added to 1968 and 1970 coverage provisions.
1975	
Ont. Regulation 803/75	
1978	
Ont. Regulation 665/78	
1986	- As developed in 1968, 1970 and 1974 above.

Table 3 concluded

Exemptions
- Most regulatory exemptions granted from 1944 to 1968 continued. - Redefined: Farming and related exemptions, salesman, firemen, and policemen. - Withdrawn: Nurses, dental technicians, taxi drivers, ambulance drivers and helpers, and occupations under Federal jurisdiction. - Added: Construction workers, homeworkers, secondary school students in unpaid work experience programs, chiropody, and where approved hours-averaging agreements are in effect.
- A person working in a university- or college-approved program.
- Further redefinition of farm-related and salesman exemptions; and supervisory and managerial exemption moved from Act to Regulation. - Withdrawn: Policemen and employees of small telephone companies.
- Inmates of correctional institutions working in authorized work or rehabilitation programs and an offender performing work under a court order.
- As outlined above; see Appendix A, Reg. 285, for current exemptions.